

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 25th day of March, two thousand sixteen.

PRESENT:

RALPH K. WINTER,
GUIDO CALABRESI,
ROSEMARY S. POOLER,
Circuit Judges.

XIONG JIANG,
Petitioner,

v.

LORETTA E. LYNCH, UNITED STATES
ATTORNEY GENERAL,
Respondent.

12-2182
NAC

FOR PETITIONER: Gary J. Yerman, New York, New York

FOR RESPONDENT: Stuart F. Delery, Principal Deputy
Assistant Attorney General; Cindy S.
Ferrier, Assistant Director;
Kimberly A. Burdge, Trial Attorney,
Office of Immigration Litigation,
United States Department of Justice,
Washington, D.C.

1 UPON DUE CONSIDERATION of this petition for review of a
2 Board of Immigration Appeals ("BIA") decision, it is hereby
3 ORDERED, ADJUDGED, AND DECREED that the petition for review
4 is DENIED.

5 Xiong Jiang, a native and citizen of China, seeks
6 review of a May 4, 2012, decision of the BIA affirming the
7 August 24, 2010, decision of Immigration Judge ("IJ") Sandy
8 Hom, denying his application for asylum, withholding of
9 removal, and relief under the Convention Against Torture
10 ("CAT"). *In re Xiong Jiang*, No. A089 810 655 (B.I.A. May 4,
11 2012), *aff'g* No. A089 810 655 (Immig. Ct. N.Y. City Aug. 24,
12 2010). We assume the parties' familiarity with the
13 underlying facts and procedural history in this case.

14 Under the circumstances of this case, we have reviewed
15 both the BIA's and IJ's opinions, including the portions of
16 the IJ's decision not explicitly discussed by the BIA. *Yun-*
17 *Zui Guan v. Gonzales*, 432 F.3d 391, 394 (2d Cir. 2005). The
18 applicable standards of review are well-established. See
19 8 U.S.C. § 1252(b)(4)(B); *Yanqin Weng v. Holder*, 562 F.3d
20 510, 513 (2d Cir. 2009).

21 For applications such as Jiang's, governed by the
22 amendments made to the Immigration and Nationality Act by
23 the REAL ID Act of 2005, the agency may, "[c]onsidering the

1 totality of the circumstances," base a credibility finding
2 on the applicant's "demeanor, candor, or responsiveness,"
3 the plausibility of his account, and inconsistencies in his
4 statements, without regard to whether they go "to the heart
5 of the applicant's claim." See 8 U.S.C.

6 §§ 1158(b)(1)(B)(iii), 1231(b)(3)(C); *Xiu Xia Lin v.*
7 *Mukasey*, 534 F.3d 162, 167 (2d Cir. 2008). We "defer
8 therefore to an IJ's credibility determination unless, from
9 the totality of the circumstances, it is plain that no
10 reasonable fact-finder could make" such a ruling. *Xiu Xia*
11 *Lin*, 534 F.3d at 167. We conclude that the agency's adverse
12 credibility determination is supported by substantial
13 evidence.

14 Contrary to Jiang's arguments, the agency did not err
15 in relying on the asylum officer's notes from the credible
16 fear interview, as the notes meet the standards for
17 reliability laid out in *Ming Zhang v. Holder*, 585 F.3d 715,
18 723-25 (2d Cir. 2009). Although the notes are not a
19 transcript, because the interview was memorialized in a
20 typewritten document which specified the questions asked and
21 Jiang's answers, the notes are sufficiently reliable. See
22 *Ming Zhang*, 585 F.3d at 725. As to Jiang's argument that

1 the interview notes reflect problems with translation, Jiang
2 did not raise this issue at the credible fear interview or
3 before the IJ. Moreover, the notes do not indicate any
4 translation problem as the asylum officer asked Jiang
5 numerous questions about handing out flyers, including
6 follow-up questions requesting clarification, which Jiang
7 answered directly, volunteering additional details.

8 The inconsistencies between Jiang's statements during
9 that interview and his testimony before the IJ provide
10 substantial evidence to support the agency's adverse
11 credibility determination. Both the BIA and the IJ
12 reasonably focused on Jiang's inconsistency regarding
13 whether he spoke to people when handing out Falun Gong
14 flyers. At the credible fear interview, when asked how he
15 distributed the flyers, Jiang volunteered that he talked to
16 people at their homes, stated that he told them about the
17 contents of the flyers, and explained that he told them
18 about the benefits of Falun Gong. However, at the hearing
19 before the IJ, when asked if he spoke to the individuals to
20 whom he gave flyers, Jiang responded in the negative, both
21 initially and when the question was repeated. Because Jiang
22 was asked multiple times by the asylum officer and again

1 before the IJ whether he spoke to people, and gave
2 contradictory answers, the agency properly relied on this
3 inconsistency as a basis for an adverse credibility finding.
4 See *Xiu Xia Lin*, 534 F.3d at 167 (providing that an IJ may
5 support an adverse credibility determination with "any
6 inconsistency or omission"). Given Jiang's multiple
7 responses indicating he spoke to people about Falun Gong,
8 the agency was not required to credit his explanation that
9 the interviewer may have been asking him about the contents
10 of the flyers. See *Majidi v. Gonzales*, 430 F.3d 77, 80-81
11 (2d Cir. 2005) (stating that the agency need not credit an
12 explanation unless that explanation would compel a
13 reasonable fact-finder to do so).

14 Jiang also asserts that the BIA did not consider the
15 totality of the circumstances because it cited only one
16 discrepancy. Because the BIA did not reject the IJ's other
17 findings, those findings remain valid bases for the adverse
18 credibility determination. See *Yun-Zui Guan*, 432 F.3d at
19 394. And those additional inconsistencies are supported by
20 the record. For example, Jiang stated at the credible fear
21 interview that he was beaten seven or eight times and
22 interrogated by six men, but testified before the IJ that he
23 was beaten eight or nine times and interrogated by only

1 three men. Similarly, at the interview, Jiang twice denied
2 having been arrested, changing his answer only when
3 confronted with his earlier statement that he had been
4 arrested. These additional findings demonstrate that the
5 agency considered the totality of the circumstances. Given
6 the reliability of the interview and the inconsistencies
7 between the interview and the testimony, it is not plain
8 that "no reasonable fact-finder could make such an adverse
9 credibility ruling," and we defer to the agency's
10 credibility determination. *Xiu Xia Lin*, 534 F.3d at 167.

11 For the foregoing reasons, the petition for review is
12 DENIED. As we have completed our review, any stay of
13 removal that the Court previously granted in this petition
14 is VACATED, and any pending motion for a stay of removal in
15 this petition is DISMISSED as moot. Any pending request for
16 oral argument in this petition is DENIED in accordance with
17 Federal Rule of Appellate Procedure 34(a)(2), and Second
18 Circuit Local Rule 34.1(b).

19 FOR THE COURT:
20 Catherine O'Hagan Wolfe, Clerk
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